

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: July 30, 2014

BILLY JAMES SIMS,

Plaintiff,

-v.-

TERI WOODS et al.,

Defendants.

REPORT AND RECOMMENDATION

12 Civ. 202 (PAC) (GWG)

No objections having been filed, and the Court having determined there is no clear error in the Report and Recommendation, the Court adopts the Magistrate Judge's recommendation. Pursuant to 28 U.S.C. 1915(a), I find that any appeal from this order would not be taken in good faith. The Clerk of Court is directed to enter judgment and terminate this case. So ordered. Copies Mailed By Chambers.

SO ORDERED - 7/30/14



Paul A. Crotty, U.S.D.J.

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

Sims initiated this action on January 10, 2012. See Complaint, filed Jan. 10, 2012 (Docket # 1). He filed an amended complaint on February 7, 2012, see Amended Complaint, filed Feb. 7, 2012 (Docket # 5), and a second amended complaint on November 15, 2012, see Second Amended Complaint, filed Nov. 15, 2012 (Docket # 24). All defendants have been dismissed except Teri Woods and Teri Woods Publishing, LLC. Proof of proper service on these defendants has never been filed. See Order, dated January 10, 2014 (Docket # 44). The Marshals Service was unable to effectuate plaintiff's most recent request to serve Teri Woods Publishing, LLC through the New York Secretary of State because of plaintiff's non-compliance with the New York Department of State's service requirements. See Process Receipt and Return, dated Feb. 11, 2014 (Docket # 45).

Accordingly, on March 27, 2014, this Court issued an Order extending the time for service under Rule 4(m) of the Federal Rules of Civil Procedure, to May 30, 2014. See Order, dated March 27, 2014 (Docket # 47) ("March 27 Order"). The Clerk of Court was directed (1) to issue summonses, based on the Second Amended Complaint, as to the two Woods defendants, Teri Woods and Teri Woods Publishing, LLC, and (2) to send plaintiff a service package for these defendants. As reflected on the docket sheet, the Clerk sent the required materials. See Docket entry dated March 28, 2014.

The March 27 Order instructed plaintiff to complete a USM-285 form for each defendant and return those forms to the Pro Se Office within 30 days. The Order contained the following statement:

Plaintiff is warned that failure to comply with this Order may result in dismissal of this action as to these defendants for failure to prosecute or for failure to effectuate timely service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

March 27 Order at 1.

Both the Pro Se Office and the U.S. Marshal's Service have informed a clerk to the undersigned that no request from plaintiff for service on either defendant was ever received. Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

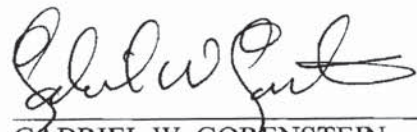
Because there has been no showing of good cause for the failure to effectuate service, and because this is not a case in which the Court should exercise its discretion to grant an extension in the absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), this matter should be dismissed without prejudice as to Teri Woods and Teri Woods Publishing, LLC pursuant to Rule 4(m). As there are no remaining defendants, the case should be closed.

**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days including weekends and holidays from service of this Report and Recommendation to serve and file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Hon. Paul A. Crotty, at 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Crotty. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: June 9, 2014
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge